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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-758

JOHN CHARLES GREEN,

Petitioner,

—v.—

STATE OF MISSOURI,

Respondent.

PETITIONER'S REPLY BRIEF

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REPLY TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

The State of Missouri asserts that no question of constitutional significance is presented because the State fails to recognize the relation between a prisoner's access to grievance procedures or to the courts and the defense of necessity in a prosecution for escape.

In all the cases cited by the State, in its Response to the Petition for Writ of Certiorari it was assumed that legal avenues of relief were open to the Petitioner. The court in *People* v. *Richards*, 75 Cal. Rptr. 597, 269 Cal. App.2d 876, (1969), which is quoted at length at pp. 7-8 by the State, is particularly pertinent on this issue. The California court went on to state that, "The prisoner should be denied self-help by escape and should be relegated to relief through established administrative channels, or, that failing, through the court," 75 Cal. Rptr. at 604.

The question here is different from that in *People* v. *Richards* because Petitioner was denied access to grievance procedures and the courts. In stark contrast to the facts of *Richards,* where the defendant had only asked guards for help, Petitioner asked the highest officials of the institution on two occasions for protection and was told both times that no protection (other than a cell change) was available (Tr. 105, 395, 331, 409, 417).

The State asserts that Petitioner was not denied access to the courts because the mails were open to him. To the contrary, the record suggests that the mails were not so open. Petitioner testified that one letter he had written to the sheriff of the locale in which he had been convicted was returned to him (Tr. 438), and the Superintendent of the institution testified that letters containing derogatory matter were returned to inmates (Tr. 338). The State's position is not only contrary to the facts, it is also contrary to the principle and the holding of *Johnson* v. *Avery,* 393 U.S. 483 (1969). That case holds that an indigent, not well educated, prisoner lacking legal aid or the help of fellow inmates (jailhouse lawyers) is, in fact, denied access to the courts. In other words, access to the mails is not access to the courts.

The facts in *People* v. *Richards* differ significantly from those in this case because there was no evidence whatever that the escapee in *Richards* was denied grievance procedures or access to the courts. In this case, the State has wholly failed to meet the burden imposed by *Johnson* v. *Avery* of showing that access to the courts existed.

Therefore, the issue of necessity was a viable issue which Petitioner should have been permitted to present to a jury in his prosecution for escape. The fact that one member

of the Missouri Supreme Court agrees with Petitioner's position renders it apparent that the evidence, if believed, may have created in the jury a reasonable doubt of Petitioner's guilt and thus led to his acquittal. To refuse to permit presentation of evidence on this asserted defense is surely to deny due process of law to Petitioner.

CONCLUSION

For the reasons set forth in this Reply Brief and in the Petition for Writ of Certiorari, the petition for certiorari should be granted.

Respectfully submitted,

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